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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2871 OF 2007

IN

FIRST APPEAL NO. 2937 OF 2006

Smt. Surekha Uddhav Hande. ...Applicant.

Vs.

The Secretary, Government of India and ors. ...Respondents.

Mr. Rameshwar Gite for the applicant.

Mr.Viraj Shukla i/by M/s.Shukla and Associates for respondent No.1.

Ms. Manisha Seth for respondent No.2.

CORAM : ANOOP V. MOHTA,J.

DATED : 7th August, 2007

P.C.

1. On application filed by the appellants, this court by order dated 26th February, 2007 subject to deposit the entire decretal amount i.e. Rs.3,00,000/-, the execution proceedings has been stayed. The appellants have deposited the amount in the Court.

2. Respondent No.1 original plaintiff, therefore moved this Civil Application No. 2871/2007 and submitted to allow her to withdraw the said decretal

amount. The appellants counsel resisted the same. The fact of accident and death are undisputable. The Trial Court, after considering the material placed on record has granted decree in favour of respondent No.1. Therefore, at this stage I am of the view that respondent No.1-applicant in this application is entitled to withdraw the part amount i.e. Rs.1,00,000/-. However, that is subject to furnishing the security to the satisfaction of the Trial Court.

3. As noted, the trial court decree is against the appellants and others including National Insurance Company and the contractor. There is no appeal preferred by those defendants except the appellants.

4. The effect of this interim order dated 14/03/2007 is that the execution of judgment and decree dated 18/07/2006 became unexecuted even against other original defendants.

5. As the decree is against all the defendants jointly and severally and as their liability to make the payment jointly and severally is still undisturbed, the original plaintiff-applicant is entitled to execute the decree against the remaining

defendants.

6. The submission that the applicant is allowed to withdraw the whole amount of Rs.3,00,000/- therefore, is rejected at this stage of the proceedings. However, she is entitled to take appropriate steps for proceedings to execute the judgment and decree for the balance amount, if so advised against the other defendants.

7. As observed, the applicant is entitled to withdraw Rs.1,00,000/- subject to furnishing security before the Trial Court.

8. Consequently, the present application is disposed of, accordingly.

[ANOOP V. MOHTA, J.]